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Supreme Court, U.S.
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NO. 87-1533

In the Supreme Court of the United States

OCTOBER TERM, 1987

GERALD R. DAUGHERTY, ET AL
Petitioners

v.

AT&T TECHNOLOGIES, INC. and
COMMUNICATIONS WORKERS OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR AT&T TECHNOLOGIES, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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10 pp

QUESTION RESTATED

Whether the Federal District Court for the Eastern District of Louisiana properly granted both Defendants summary judgment pursuant to FRCP 56, thereby dismissing Plaintiffs' hybrid Section 301/duty of fair representation claims, because Plaintiffs failed to raise any material fact issue regarding a breach of the collective bargaining agreement and failure in the Union's duty of fair representation.

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OPINIONS BELOW

The opinion of the court of appeals is an unreported unanimous panel decision issued pursuant to FRAP 47.6. The decision is included in Petitioners' Appendix at page 22. The opinion of the District Court is also unreported and is included in Petitioners' Appendix at pages 24-35.

JURISDICTION

Petitioner invoked the jurisdiction of this Court under 28 U.S.C. § 1254(1). The decision of the Court of Appeals was dated and entered on October 13, 1987. The Clerk's office received the typed copy of the Petition on January 11, 1988. It was returned to Petitioners' counsel because it failed to comply with the Rules. A printed

Petition was mailed to the Court in February. This was also returned due to the failure to comply with the Rules.

Finally, over 60 days after the due date for a timely Petition for a Writ of Certiorari (Supreme Court Rule 20.1), on March 15, 1988, the Clerk of Court received a proper Petition. This Petition varied substantively from the original submission in numerous respects. Arguments advanced in the Petition filed on March 15, 1988 were not included in the original submission. Respondent submits this Petition is untimely and therefore should not even be considered. For this and the reasons set forth hereinafter, the Petition should be denied.

STATUTORY PROVISIONS

Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a) provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

Petitioners filed their civil action pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, against their former employer, AT&T Technologies Inc. (AT&T) claiming their selection for forced transfer violated the applicable terms of the collective bargaining agreement which admittedly covered their employment. Plaintiffs also sued their collective bargaining representative, the Communications Workers of America, (CWA or

Union) claiming the Union had failed to represent the Petitioners fairly when it decided not to take their grievances to arbitration. The district court, shortly before the scheduled trial of the matter, granted summary judgment to both defendants finding the actions taken by the employer were not in violation of the applicable collective bargaining agreement and, further, that there was absolutely no evidence the Union had breached its duty of fair representation to the Petitioners. Petitioners timely appealed the judgment of the district court. After hearing oral argument, the Fifth Circuit affirmed the decision.

REASONS FOR DENYING THE PETITION

In this Court, Petitioners simply reurge factual claims raised and fully considered by both the district court and the court of appeals. There is no substantial legal issue involved in this case. The Fifth Circuit's decision neither possesses national importance nor is it otherwise review worthy. Both of the lower courts properly applied the law to the undisputed facts. There is no reason for further review of this matter. Respondent AT&T Technologies Inc. respectfully requests this Court deny the Petition for a Writ of Certiorari in this case.

Moreover, this case does not involve any conflict among the courts of appeals, nor does the Petition raise any significant issue of federal law. The Petition does not state any reason why this Court should exercise jurisdiction over this matter. In fact, the Petition fails to refer to any of the reasons listed in Supreme Court Rule 17 as considerations supporting the issuance of a writ of certiorari. Nor does the Petition contain any argument as to the importance of the case. Petitioners have not identified any error of law made by the lower courts. There is absolutly no reason for this Court to exercise its supervisory jurisdiction over this case.

Since this Court's decisions in *Vaca v. Sipes*, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed. 2d 842 (1967), and *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 96 S.Ct. 1048, 47 L.Ed.2d 2311 (1976), the law applicable to cases of this nature has been understood and routinely applied by the lower federal courts. The Fifth Circuit has consistently followed the principles established by this Court. *See, e.g., Sturgeon v. Airborne Freight Corp.*, 778 F.2d 1154 (5th Cir. 1985); *Eitmann v. New Orleans Public Service, Inc.*, 730 F.2d 359 (5th Cir.), *cert. denied*, 469 U.S. 1018 (1984).

In this case, the district court properly applied these well established principles in denying Petitioners' claims. Citing *Hines v. Anchor Motor Freight, Inc., supra*, the court properly held the Petitioners were required to satisfy two requirements to establish a Section 301 violation: 1) a breach of the collective bargaining agreement; and 2) a breach of the duty of fair representation by the union. (Petitioners' Appendix at p. 31). Petitioners have not challenged the applicability of this principle.

On the contract violation issue, Petitioners appear to argue the district court misinterpreted the applicable collective bargaining agreement. There was no dispute over the wording of the contract. The district court's decision was based directly on the uncontradicted affidavit of the union official responsible for handling the grievances filed by the Petitioners. The affidavit established that both the company and the Union concluded the contract had not been violated. (Petitioners' Appendix at pp. 31-32). Petitioners' argument is nothing more than a claim that their interpretation of the contract is correct and the joint company/union interpretation is erroneous. Before the lower courts, as here, Petitioners offered their own contract interpretation; however, they offered no evidence supporting their interpretation. Both lower courts rejected this

argument based on the record evidence.

The district court also correctly held there was absolutely no evidence suggesting the Union breached its duty of fair representation in deciding not to pursue Petitioners' grievances to arbitration. Petitioners argued below the Union processed the grievances in a "perfunctory" manner. However, Petitioners did nothing to contradict the affidavit of the Union official who handled these grievances detailing how the grievances were processed, investigated, and discussed with the company. After this process the Union decided not to pursue the grievance to arbitration. While Petitioners make a conclusory argument this was a breach of the Union's duty of fair representation, they offered no evidence showing the Union's decision not to pursue the grievance was anything other than a good faith interpretation of the contract language.

The district court was presented with a sworn affidavit from the CWA official who processed the grievances detailing the steps taken to investigate the claims and describing the CWA's reasons for deciding not to pursue the matter to arbitration. Petitioners offered absolutely no evidence challenging the affidavit or suggesting any misconduct or impropriety in the CWA's handling of the grievances. Rather than offering specific evidence pursuant to FRCP 56, the Petitioners offered conclusory arguments that the Union "rolled over and played dead" when it decided not to arbitrate the dispute. The Union's good faith refusal to arbitrate a grievance in not a breach of its duty of fair representation. *Vaca v. Sipes, supra.* Again, Petitioners do not challenge the lower court's application of this settled principle, nor do they ask this Court to reconsider this standard.

CONCLUSION

The Petition for Writ of Certiorari in this matter is untimely and should therefore be rejected. Further, the Petitioners fail to raise a single significant legal issue. There is absolutely no reason for this Court to exercise supervisory jurisdiction over this matter. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the above and foregoing Brief for AT&T Technologies, Inc. in Opposition to Petition for Writ of Certiorari has been served upon all counsel of record by placing a copy of the same in the United States Mail, properly addressed, postage prepaid on this ____ day of _____, 1988.

_____

KEITH M. PYBURN, JR.